

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM MURRY PORTER,

Petitioner,

v.

JAMES KEY,

Respondent.

NO: 2:20-CV-206-TOR

ORDER DISMISSING PETITION
WITH PREJUDICE

By Order filed June 29, 2020, the Court directed Petitioner to show cause why his *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 should not be dismissed as time-barred under 28 U.S.C. § 2244(d). ECF No. 3. Petitioner submitted a timely response. ECF No. 4. Petitioner, a prisoner at the Airway Heights Corrections Center is proceeding *pro se* and has paid the \$5.00 filing fee.

Petitioner contends he was unaware that his 90-month determinate sentence had been amended in 2003, until he discovered the order amending his sentence in

1 his central file in the late summer of 2009. ECF No. 4 at 1. Petitioner argues that
2 the state failed to notify him of the hearing or the amendment, he did not attend the
3 April 28, 2003 hearing and his court appointed counsel did not notify him of the
4 hearing or the amendment. *Id.* Petitioner asserts that he filed his first Personal
5 Restraint Petition on September 30, 2009 and diligently pursued his rights by filing
6 a total of five state court petitions before he received a certificate of finality on June
7 18, 2019. *Id.* at 2. This federal habeas corpus petition followed almost a year later
8 on June 15, 2020. *Id.* at 3.

9 These assertions fail to demonstrate either a statutory or an equitable basis to
10 toll the running of the federal limitations period under 28 U.S.C. § 2244(d). As
11 noted in the previous order, the Washington State appellate courts found Petitioner's
12 submissions untimely and the Washington State Supreme Court denied his Motion
13 for Discretionary Review in April 2019. ECF No. 3 at 2-3.

14 It is the decision of the state appellate court, rather than the ministerial act of
15 entry of the mandate, or in this case the certificate of finality, that signals the
16 conclusion of review. *See Wixom v. Washington*, 264 F.3d 894, 897-98 (9th Cir.
17 2001). Furthermore, because the state courts determined Petitioner's submissions
18 were untimely, they could not statutorily toll the running of the federal limitations
19 period. *See Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005) ("Because the state
20 court rejected petitioner's [state] petition as untimely, it was not 'properly filed,' and


1 he is not entitled to statutory tolling under § 2244(d)(2).”); *Ferguson v. Palmateer*,
2 321 F.3d 820, 823 (9th Cir. 2003) (“section 2244(d) does not permit the reinitiation
3 of the limitations period that has ended before the state petition was filed”); *Jimenez*
4 *v. Rice*, 276 F.3d 478, 482 (9th Cir. 2001) (An application for state post-conviction
5 relief does not toll the statute of limitations if the petitioner files it after the statute
6 of limitations has expired.).

7 Although granted the opportunity to do so, Petitioner offers nothing more than
8 self-serving and unsupported assertions of diligence to toll the federal limitations
9 period. The Court finds that Petitioner is not entitled to equitable tolling. *See*
10 *Holland v. Florida*, 560 U.S. 631, 649 (2010). Therefore, **IT IS ORDERED** that
11 the Petition, ECF No. 1, is **DISMISSED with prejudice** as untimely under 28
12 U.S.C. § 2244(d).

13 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
14 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
15 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
16 taken in good faith, and there is no basis upon which to issue a certificate of
17 appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

18 **DATED** July 27, 2020.




THOMAS O. RICE
United States District Judge